

Estate of Tineyuyah (Moses)

IBIA 71-10

Decided July 12, 1971

Indian Probate: Wills: Disapproval of Will

The Secretary cannot properly disapprove a valid Indian will merely because it may disinherit a potential heir at law.

ESTATE OF TINEYUYAH (MOSES)	:	Appeal from Denial of Rehearing
	:	
	:	
Deceased	:	Affirmed
Kiowa Allottee No. 705	:	
Probate No. H-166-70	:	IBIA 71-10
H-245-70	:	July 12, 1971

This matter comes before the Board on appeal from the Examiner's denial of appellant's petition for rehearing. In her petition for rehearing, the appellant herein, Mrs. Betty Tineyuyah Murdock, contended that the Examiner's Order Approving Will and Decreeing Distribution was erroneous in that the decedent's will was improperly executed, that the testator lacked the requisite testamentary capacity, that the will was the result of undue influence, and that appellant is entitled to an intestate share in the estate by virtue of her blood relationship to the decedent.

These contentions were raised at the initial hearing before the Examiner and were duly considered and rejected in the decisions below for reasons fully set forth therein.

Since the record shows that the testator possessed the requisite testamentary capacity, and that his will was properly executed according to the regulations of the Secretary of the Interior, it is irrelevant whether the Appellant herein is a blood relative of the decedent. The Secretary has issued no regulation requiring a testator to provide for any particular class of persons.

Federal law provides that an Indian having interests in trust or restricted property may dispose of such property by will, provided that his will is approved by the Secretary of the Interior. The Examiner below, an authorized representative of the Secretary in such matters, found that the will was properly and validly drawn. Having found the will to be valid, the Examiner could not properly have set the will aside because it seemed unfair to a potential heir at law. See Tooahnippah v. Hickel, 397 U.S. 598 (1970).

Pursuant to authority vested in the Board of Indian Appeals by the Secretary of the Interior (35 F.R. 12081), the decision appealed from is hereby AFFIRMED, and the appeal is dismissed.

James M. Day, Member
Board of Indian Appeals

I concur:

David J. McKee, Chairman
Board of Indian Appeals